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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,389	04/04/2001	Jens Berger	2345/127	6185

26646 7590 07/23/2004

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

STORM, DONALD L

ART UNIT	PAPER NUMBER
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2654

DATE MAILED: 07/23/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/530,389

Applicant(s)

BERGER, JENS

Examiner

Donald L. Storm

Art Unit

2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-14 is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Oath/Declaration

2. The deficiency in the declaration remains pending correction or final waiver.

Response to Amendment

3. The substitute specification "Substitute Specification B", (including an abstract, but without claims) filed April 13, 2004 (paper 16) has been entered.

Claim Rejections - 35 USC § 103

Beerends and Hollier

4. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beerends et al. [International Publication WO 96/28952] in view of Hollier [US Patent 5,621,854] using the same rationale as in the prior Office action (paper 12).

Allowable Subject Matter

5. Claims 11-14 are allowed.

Response to Arguments

6. The prior Office action, mailed October 8, 2003 (paper 12), objects to the title, abstract, specification, and claims, and rejects claims under 35 USC § 103, citing Beerends. The

Applicant's arguments and changes in AMENDMENT filed April 13, 2004 (paper 15) have been fully considered with the following results.

7. With respect to objection to the title, the Applicant's choice carries the issue. Accordingly, the objection is removed.

8. With respect to objection to the abstract, the changes entered by amendment provide appropriate descriptions of the disclosure, particularly the matter claimed as new. Accordingly, the objection is removed.

9. With respect to objection to the specification as lacking brief descriptions of the drawings, the substitute specification provides them. Accordingly, the objection is removed.

10. With respect to objection to the claims dependent upon rejected base claims, the base claims have been allowed. Accordingly, the objections are removed.

11. With respect to rejection of claims under 35 USC § 103, citing Beerends and Hollier in combination, the Applicant's arguments appear to be as follows:

a. The Applicant's argument appears to be that the combination of the Beerends and Hollier references does not describe all the limitations of the claims and does not make obvious the whole subject matter claimed. This argument is not persuasive because it amounts to a general allegation that the claimed invention distinguishes. It does not specifically point out how the claim limitations differ from the reference citations of the rejection of the prior Office action. Beerends and Hollier describe the claimed subject matter using the terminology at the passages that

are specifically cited in the prior Office action in which specific citations to the terminology and passages in the references were detailed and referred to in this Office action.

b. The Applicant's argument appears to be that Beerends power per time values and resampling them on the basis of the Bark scale is not an intensity using variable limits for the frequency bands. This argument is not persuasive because intensity is values of power per unit time and the limits that are defined as Bark bands vary from one band to the next. For testimony by an artisan, see Hollier, numbered section 13 of the prior Office action indicates that Hollier [at column 6, lines 25-30] describes the Bark limits as variable.

c. The Applicant's argument appears to be that Beerends does not teach weighting. This argument is not persuasive because Beerends weighting is in the two teachings described in the prior Office action: (1) discounting the parameters and (2) producing the portion of the differences that is to be used in discounting (The assessed and reference signals will be discounted.) It is the content and functionality of the recited limitation of weighting that equates to the content and functionality of discounting the signals by a portion. It is not required that the terminology applied to the prior art elements be identical to claim terminology.

d. The Applicant's argument appears to be that the prior Office action does not show why an artisan would be motivated to combine the Beerends and Hollier references. This argument is not persuasive because the prior Office action points out in numbered section 13 that Hollier [at columns 1-2] is aware of the suitability of Beerends descriptions for speech quality measurements of codec signals. The Hollier reference suggests Beerends' teachings should be applied to codec signals that are speech signals.

e. The Applicant has requested evidence regarding the assertions of what is alleged to be obvious to artisans. The prior Office action states that it would have been obvious to one of

ordinary skill in the art of codec signals at the time of invention that Beerends is suitable for speech signals of a voice codec. The prior Office action refers to the ISR form PCT/PSA/210. The Examiner provides that ISR, which appears in the reference already of record, as evidence. In that PCT form, the ISA cites Beerends description of a speech-quality measure as generally descriptive of the audio descriptions in the Beerends reference.

The Applicant's arguments have been fully considered but they are not persuasive. Accordingly, the rejections are maintained.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any response to this action should be mailed to:

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to:

(703) 872-9306, (for formal communications; please mark "EXPEDITED PROCEDURE")

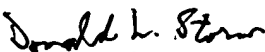
Or:

(703) 872-9306, (for informal or draft communications, and please label "PROPOSED" or "DRAFT")

Patent Correspondence delivered by hand or delivery services, other than the USPS, should be addressed as follows and brought to U.S. Patent and Trademark Office, 220 20th Street S., Customer Window, **Mail Stop AF**, Crystal Plaza Two, Lobby, Room 1B03, Arlington, VA, 22202

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L. Storm, of Art Unit 2654, whose telephone number is (703) 305-3941. The examiner can normally be reached on weekdays between 8:00 AM and 4:30 PM Eastern Time. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (703) 305-9645.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Inquiries regarding the status of submissions relating to an application or questions on the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028 between the hours of 6 a.m. and midnight Monday through Friday EST, or by e-mail at: ebc@uspto.gov. For general information about the PAIR system, see <http://pair-direct.uspto.gov>.


Donald L. Storm
July 19, 2004


RICHEMOND DORVIL
SUPERVISORY PATENT EXAMINER